

REMARKS

Claims 1, 3-4, and 13 are currently amended. Claims 2, 6-8, 11, 15, 18, 25, and 28-54 are canceled. Claims 5, 9-10, 12, 14, 16-17, 19-23, and 26-27 were previously presented. Claim 24 is withdrawn. New claims 55-61 are added. Accordingly, claims 1, 3-5, 9-10, 12-14, 16-17, 19-23, 26-27, and 55-61 are pending examination.

Allowable subject matter

The Office Action indicates that claim 2 would be allowable if re-written in independent form. In response, independent claim 1 is amended to include subject matter from claim 2. Claims 3-5, 9-10, 12-14, 16-17, 19-23, and 26-27 each depends directly or indirectly from claim 1. Accordingly, claims 3-5, 9-10, 12-14, 16-17, 19-23, 26-27 are believed to be in condition for allowance.

Request for Rejoinder

Since claim 1 is a generic claim that is believed to be in condition for allowance, the Applicant respectfully requests rejoinder of withdrawn claim 24.

New Claim 55-61

New claim 55-61 correspond to prior claims 13-20. Accordingly, the Applicant responds to the pending rejection of claims 13-20 here. Prior claims 13-20 stand rejected under 35USC103 as unpatentable over U.S. Patent Application No. 2006/0035154 (West et al.).

Swearing Behind West

West claims the benefit of U.S. Provisional Patent Application 60/542,017 (the '017 application). The Office Action relies on the filing date of the '017 application in order to provide West with a 102(e) date. In the absence of the '017 application, West is not prior art for the current claims.

The Applicant elects to swear behind the '017 application in accordance with 37CFR1.131. The pending rejection is a single reference obviousness rejection. MPEP 715.02 provides the following:

Note, however, where the differences between the claimed invention and the disclosure of the reference(s) are so small as to render the claims obvious over the reference(s), an affidavit or declaration under 37 CFR 1.131 is required to show no more than the reference shows. *In re Stryker*, 435 F.2d 1340, 168 USPQ 372 (CCPA 1971). In other words, where the examiner, in rejecting a claim under 35 U.S.C. 103, has treated a claim limitation as being an obvious feature or modification of the disclosure of the reference(s) relied upon, without citation of a reference which teaches such feature or modification, a 37 CFR 1.131 affidavit or declaration may be sufficient to overcome the rejection even if it does not show such feature or modification.

Since this text applies to the current rejection, in order to swear behind the '017 application, the Applicant need only show that the inventors of the current invention were in possession of the material in the '017 application before the filing date of the '017 application.

A Declaration under 37CFR1.131 is attached as exhibit A. The Declaration is signed by each of the inventors of this application. The Declaration includes an e-mail labeled Exhibit A and a redacted document labeled Exhibit B (the e-mail attachment). The declaration shows that each of the inventors was included in the e-mail and that the e-mail was sent February 3, 2004. The e-mail also shows an e-mail attachment. The declaration shows that the document labeled exhibit B is an accurate reproduction of the e-mail attachment. Since the e-mail was sent on February 3, 2004, the latest that the inventors were in possession of the material in the e-mail attachment is February 3, 2004. Since the '017 application was filed on February 4, 2004, the inventors were in possession of the material attached to the e-mail before filing of the '017 application.

An examination of the e-mail attachment shows that it is a draft of the '017 application. Accordingly, the e-mail attachment contains much of the same disclosure as the '017 application. As a result, as required by the above citation from MPEP 715.02, the

inventors of the current invention were in possession of the material in the '017 application before the filing date of the '017 application.

Additionally, there was due diligence between the sending of the February 3, 2004 e-mail and the patenting process. Note that the current application was filed March 25, 2004, less than two months after the e-mail. Further, the current application claims the benefit of U.S. Provisional Application serial numbers 60/543,951 and 60/543,878 which were each filed on February 11, 2004.

Since the inventors of the current invention were in possession of the material in the '017 application before the filing date of the '017 application coupled with due diligence from before the filing date of the '017 to the filing of the application, the '017 application is not prior art for the purposes of the pending rejection. Additionally, without the benefit of the '017 application, West is not prior art under 35USC102(e). Since neither West nor the '017 application are prior art for the pending rejection, claim 55-61 are patentable over the cited art.


Swearing Behind Yoon

The Applicant notes that Office Action also applies U.S. Patent Application No. 2005-0170253 (Yoon) under 35 USC 102(e) and 35 USC 103. Yoon also claims the benefit of the '017 application but is not prior art under 35USC102(e) without the benefit of the '017 application. Accordingly, the arguments made above with respect to West also apply to Yoon.

CONCLUSION

The Examiner is encouraged to telephone the undersigned with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Travis Dodd', written over a horizontal line.

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